

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

State/Territory: Kansas

REQUIREMENTS FOR ADVANCE DIRECTIVES UNDER STATE PLANS
FOR MEDICAL ASSISTANCE

The following is a written description of the law of the State (whether statutory or as recognized by the courts of the State) concerning advance directives. If applicable States should include definitions of living will, durable power of attorney for health care, durable power of attorney, witness requirements, special State limitations on living will declarations, proxy designation, process information and State forms, and identify whether State law allows for a health care provider or agent of the provider to object to the implementation of advance directives on the basis of conscience.

DESCRIPTION OF THE LAW OF KANSAS
CONCERNING ADVANCE DIRECTIVES

There are two types of "advance directives" in Kansas. One is commonly called a "living will" and the second is called a "durable power of attorney for health care decisions."

The Kansas Natural Death Act, K.S.A. 64-28,106, et seq.

This law provides that adult persons have the fundamental right to control decisions relating to their own medical care. This right to control medical care includes the right to withhold life-sustaining treatment in case of a terminal condition.

Any adult may make a declaration which would direct the withholding of life-sustaining treatment in case of a terminal condition. Some people call this declaration a "living will." The declaration must be:

1. In writing;
2. Signed by the adult making the declaration;
3. Dated; and
4. Signed in front of two adult witnesses.

There are specific rules set out in the law about the signature in case of an adult who can't write. There are specific rules about the adult witnesses. Relatives by blood or marriage, heirs, or people who are responsible for paying for the medical care may not serve as witnesses. A woman who is pregnant may not make a declaration.

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The declaration may be revoked in three ways:

1. By destroying the declaration;
2. By signing and dating a written revocation; and
3. By speaking an intent to revoke in front of an adult witness. The witness must sign and date a written statement that the declaration was revoked.

Before the declaration becomes effective, two physicians must examine the patient and diagnose that the patient has a terminal condition.

The desires of a patient shall at all times supersede the declaration. If a patient is incompetent, the declaration will be presumed to be valid.

The Kansas Natural Death Act imposes duties on physicians and provides penalties for violations of the laws about declaration.

The Kansas Durable Power of Attorney for Health Care Decisions Law,
K.S.A. 58-625, et seq.

A "durable power of attorney for health care decisions" is a written document in which an adult gives another adult (called an "agent") the right to make health care decisions. The power of attorney applies to health care decisions even when the adult is not in a terminal condition. The adult may give the agent the power to:

1. Consent or to refuse consent to medical treatment;
2. Make decisions about donating organs, autopsies, and disposition of the body;
3. Make arrangements for hospital, nursing home, or hospice care;
4. Hire or fire physicians and other health care professionals; or
5. Sign releases and receive any information about the adult.

A "durable power of attorney for health care decisions" may give the agent all those five powers or may choose only some of the powers. The power of attorney may not give the agent the power to revoke the adult's declaration under the Kansas Natural Death Act ("living will"). The power of attorney only takes effect when the adult is disabled unless the adult specifies that the power of attorney should take effect earlier.

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The adult may not make a health care provider treating the adult the agent except in limited circumstances.

The power of attorney may be made by two methods:

1. In writing;
2. Signed by the adult making the declaration;
3. Dated;
4. Signed in front of two adult witnesses;

Or:

Written and notarized.

Relatives by blood or marriage, heirs, or people who are responsible for paying for the medical care may not serve as witnesses.

The adult, at the time the power of attorney is written, should specify how the power of attorney may be revoked.

The Patient Self-Determination Act, Sections 4206 & 4751 of the Omnibus Budget Reconciliation Act of 1990, P.L. 101-508

This federal law begins December 1, 1991. It applies to all Medicaid and Medicare hospitals, nursing facilities, home health agencies, hospices, and prepaid health care organizations. It requires these organizations to take certain actions about a patient's right to decide about health care and to make advance directives.

This law also required that each state develop a written description of the State law about advance directives. This description was written by the Medical Services Section of the Kansas Department of Social and Rehabilitation Services to comply with that requirement. If you have any questions about your rights to decide about health care and to make advance directives, please consult with your physician or attorney.